Fight Over Canyon Quarry Continues in Court

Residents argue LDS Church granite mining violates ordinance; church says residents have no standing

BY LINDA FANTIN

THE SALT LAKE TRIBUNE

If a figurine falls in the forest, and no one is there to see it, can the LDS Church be held accountable? What about the county planning board?

It is less of a philosophical riddle than a legal question, and the answer could make the difference in a high-profile lawsuit.

Karen and Bruce Cunningham are suing to stop The Church of Jesus Christ of Latter-day Saints from mining granite on church property in Little Cottonwood Canyon. The Cunninghams, who live within 1,700 feet of the church property, claim the project contradicts canyon zoning ordinances and is therefore illegal.

On Monday, the couple's attorney argued that Salt Lake County had no authority to overlook canyon-protection laws, while church attorney David Wahlquist tried to show the Cunninghams had no business being in court.

To have standing, the Cunninghams must prove they have suffered sufficiently more than the average person.

"[Karen Cunningham] lacks any damage upon which she can make a complaint," Wahlquist said, urging 3rd District Judge Stephen Henriod to dismiss the suit.

During the first day of the two-day trial, Cunningham described the noisy blasts as "a sonic boom, only longer." She claimed the vibrations have caused a glass, a plate and a figurine to fall from shelves in her home.

But she later testified that she discovered the damage upon returning home from work and that no one witnessed the items falling. Wahlquist also whittled away at Cunningham's claims that the project caused muddy water to pour onto her property during rainstorms. Silt had piled up in front of her garage even before contractors began grading roads to reach the granite, Cunningham acknowledged.

She also said no rocks had tumbled down the hill and the project has not limited access to her property.

All this may make the Cunninghams look like whiners, but it has nothing to do with the legal issues at hand, said their attorney, Cullen Battle. He accused church and county lawyers of launching a public-relations campaign instead of a court fight.

"They are trying to make the magnitude of the project's impact the main focus of the case," he said. "The real issue is whether the church is entitled to a conditional-use permit given the terrain."

In approving the project, the county Planning Commission insisted the plans conform to all aspects of The Foothills and Canyons Overlay Zone. That ordinance prohibits roads that cross slopes in excess of 30 percent where those sections total 10 percent of the entire road or stretch for 100 continuous feet. Evert Lawton, an associate professor of civil engineering at the University of Utah, testified that both roads associated with the granite project grossly violate those slope standards.

J.D. Johnson, the county's director of Development Services, said planning commissioners were aware that the roads violated slope standards, but acknowledged that his staff never determined to what degree. Johnson later contradicted himself when he testified that he did not submit a required written report detailing the degree to which the overlay ordinance was breached because "we felt there were no areas of noncompliance."

He recommended approval because the roads were temporary, and without them, the church would be unable to access its granite, which it is using on a downtown Salt Lake City assembly hall it is building. The granite matches that used on the LDS Salt Lake Temple.

The trial resumes Wednesday.

West Turns Against Off-Roaders

Watercraft also facing severe new restrictions

BY GREG BEACHAM

THE ASSOCIATED PRESS

Craig Hansell/The Salt Lake Tribune

Watercraft riders and off-roaders say their freedom to roam is being curtailed. In the past eight months, three recreation areas have been partially or completely closed to such traffic.

The West was once their playground, but the tide of public opinion and government policy is turning against users of off-highway vehicles (OHVs) and personal watercraft.

Environmentalists, safety advocates and federal land managers have won a number of recent fights to keep the machines out of traditional recreation areas and established wilderness alike.

Off-roaders and watercraft riders are furious at the latest limitations on their freedom to roam.

"It seems like every week there's another closure," Utah Trail Machine Association executive director Brian Louw said. "The government doesn't care [that] the outdoors are for everyone."

Anti-machine activists say the recent spate of closures may signal a change in a traditional Western outlook that honors individualism over the herd. They plan to continue challenging the machines throughout the West.

In the past eight months, three high-profile Utah recreation areas have been partially or completely closed to off-road traffic. Depending on the outcome of negotiations over new wilderness designations in Utah, many more trails could be closed.

"There is definitely [a trend]," said Southern Utah Wilderness Alliance attorney Heidi MacIntosh. "OHVs are becoming so prevalent now that you really can't go anywhere without seeing the scars. There's a backlash against that.

"You're talking about damaging the environment for the sake of a thrill. I think some people are starting to wake up."

Dustin Sweetin is an off-highway vehicle and Jet Ski dealer in Lindon who also sits on the state's nine-member OHV Advisory Council. He said "apathy" and a lack of understanding of the issues on the part of riders are the primary reasons for the recent closures.

"You've got an environmental community that's fewer in number but larger in support," Sweetin said. "The [OHV and personal watercraft] users are out being active . . . but they're not organized to protect their interests."

While supporters tout OHVs as vehicles for exploration and fun, many others describe them as smoke-belching, terrain-mulching monsters that leave a trail of destruction. Similar complaints are targeted at snowmobiles in the winter.

In November 1997, the Bureau of Land Management proposed closing 212 miles of vehicle routes in the scenic San Rafael Swell. And on July 22, the U.S. House Resources Committee approved a plan to designate 630,000 acres of the swell as a National Conservation Area, limiting OHV access to many areas.

In July, a federal judge ordered Canyonlands National Park to close a 10-mile trail through Salt Creek Canyon. The court claimed the vehicles were shredding a fragile ecosystem and creating unwelcome noise and pollution.

Personal watercraft are perhaps even more reviled than OHVs. They are propelled by water jets created by high-speed pumps, which are powered by gasoline engines. According to industry estimates, there are more than 1 million personal watercraft in use nationwide.

Detractors say the craft are intolerably noisy and can leave a trail of oil on the water. Because almost anyone can operate one and quickly reach speeds of 60 mph, the watercraft are involved in a disproportionate number of accidents.

On July 8, the National Park Service rattled personal watercraft enthusiasts when it announced plans to ban the machines from most of the waterways it manages.

Sweetin said his Jet Ski sales have been cut in half over the last two years by the negative publicity surrounding the vehicles.

Appellate Court Overturns Ruling on Ute Water Rights

BY SHEILA R. McCANN

THE SALT LAKE TRIBUNE

The Ute Distribution Corp. has been dealt a sharp setback in its bid to join in the management of lucrative water rights held by the Ute tribe in eastern Utah.

In a decision released Thursday, a federal appellate court overturned a trial judge's determination that the corporation can sue the tribe over the issue.

The corporation, or UDC, was created to represent so-called mixed-blood Utes, whose tribal membership was terminated in 1954. Tribal assets that could not be divided and distributed to the terminated members — such as oil, gas and mineral rights — were to be managed jointly by the tribe and the UDC.

The UDC sued the tribe in 1995, arguing it should also share in the management of water rights. The tribe asked U.S. District Judge David Winder to dismiss the case, contending it was legally immune to the UDC's lawsuit. Winder disagreed, and the tribe appealed.

This week, the 10th Circuit Court of Appeals in Denver reversed Winder's ruling, finding the Ute Partition and Termination Act of 1954 does not say the tribe can be sued in federal court over the jointly managed assets.

Any waiver of immunity by the tribe, allowing such a lawsuit, would have to be clearly stated, the court said.

The UDC unsuccessfully argued the court should infer the tribe can be sued, contending litigation may be a necessary tool to ensure the tribe complies with the act.

But the appellate court returned the case to the trial court to examine a narrow issue: whether the tribe is acting as a government entity or a corporate entity when it manages the joint assets.

If the tribe is acting as a corporation, a clause in its corporate charter may allow lawsuits against it, said appellate Judge Michael R. Murphy of Utah.

On another front, the UDC is awaiting a decision from the federal government about whether it should share in the management of tribal water rights, said UDC attorney Camille Johnson.

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Whatever happened to Bill Kamp?

When 12-year old Bill Kamp arrived in Salt Lake City, he was soon confronted by a group of boys on the school yard who asked him threateningly about the past World War. "Did you like the Kaiser when you lived in Germany?" Drawing upon his limited English vocabulary, Bill replied, "No." The next thing Bill knew he was being called a "damn liar" and a scuffle occurred.

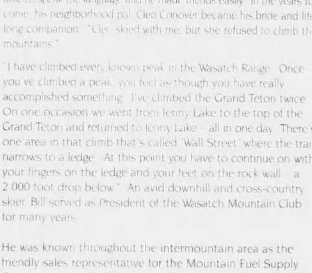
Adjusting to life in America was not easy, but within six months he was able to speak the language and he made friends easily. In the years to come, his neighborhood pal, Cleo Conover became his bride and life long companion. "Cleo skied with me, but she refused to climb the mountains."

"I have climbed every known peak in the Wasatch Range. Once you've climbed a peak, you feel as though you have really accomplished something. I've climbed the Grand Teton twice. On one occasion we went from Jenny Lake to the top of the Grand Teton and returned to Jenny Lake – all in one day. There's one area in that climb that's called 'Wall Street' where the trail narrows to a ledge. At this point you have to continue on with your fingers on the ledge and your feet on the rock wall – a 2,000 foot drop below." An avid downhill and cross-country skier, Bill served as President of the Wasatch Mountain Club for many years.

He was known throughout the intermountain area as the friendly sales representative for the Mountain Fuel Supply Company. He ended his 45-year career as a Commercial and Industrial Sales Representative.

Following his hip surgery, his children looked into retirement communities for their father. His daughter Bonnie explained, "We had heard about Highland Cove and it was recommended to us as having a good reputation."

Bill Kamp adds, "Highland Cove is A Number One. I love it here at the Hotel. The thing that sold it for me was my patio."



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